IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.1944 OF 2006

M/s. Patel Engineering Works & anr. ..Petitioners.
Vs.
Yudhishtir V. Khere & Ors. ..Respondents.

...

Mr. P.M. Patel for the Petitioners.
Mr. A.D. Shetty i/b Mr. Thamnesh Shetty with Mr. F.R. Mishra for the Respondents.

...

CORAM: DR. D.Y. CHANDRACHUD, J.

1st August, 2006.

P.C. :

1. Rule. By consent of the learned counsel and at their request heard forthwith.

2. An application that was filed under Section 33 C (2) of the Industrial Disputes Act, 1947 by a group of workers, Respondents 1 to 23, has been allowed by the impugned order dated 27th February, 2006 passed by the Labour Court.

3. The Petitioners had put up a notice on 27th March, 1997 by which a Scheme for Voluntary Retirement came to be notified. The scheme contemplated that workmen who opted for voluntary

retirement would be paid i) Gratuity in accordance with law; ii) One month's notice pay; (iii) 10 days' wages for every completed year of service or for every year of service left until the date of superannuation whichever was less; (iv) Bonus for the current year at the rate of 8.33% and v) All other legal dues. All the workmen involved in the present case submitted their applications for voluntary retirement. The workmen, however, had filed two complaints of unfair labour practices in which it was contended that the applications that had been filed by the workmen were not voluntarily filed. The complaints were dismissed by the Industrial Court on 21st October, 1999. The Industrial Court found as a matter of fact that the workmen governed in these proceedings had in fact submitted their applications for voluntary retirement, which had been duly accepted by the management. The contention of the workmen to the effect that the consents that were granted by them were under coercion or duress has been negatived. When the matter was carried in writ proceedings to this Court the advocate appearing on behalf of the workmen stated that the workmen were willing to accept the benefit of the Voluntary Retirement Scheme. By an order dated 12th June 2003 this Court granted liberty to the workmen to pursue their regular remedy

under the law for the recovery of their dues.

4. Thereupon an application under Section 33 C (2) was filed. The findings in the earlier round of proceedings before the Court that have attained finality clearly demonstrate that the workmen had submitted an application in response to the scheme for Voluntary Retirement and that those applications were accepted by the management. That being the position, the finding of the Labour Court that there was a preexisting right to receive the benefits due and payable under the Scheme for Voluntary Retirement cannot be faulted. In fact, it was the case of the management in the earlier complaints of unfair labour practices that the applications for voluntary retirement had been accepted.

5. On behalf of the Petitioners, a serious grievance has been made about the manner in which the computation of benefits due to the workmen has been carried out. On the basis of the chart submitted by the workmen (Exh. E page 72) counsel appearing for the management sought to highlight certain discrepancies therein, particularly in regard to the manner in which the computation of gratuity and encashment of leave has been

computed. On the other hand, it would appear that it was only on 12th December, 2005 after the recording of evidence was complete that the management sought to submit a chart of details in respect of the concerned workmen. Copies of the chart submitted by the management are annexed at Exh. G to the Petition. The Labour Court has in the course of its judgment observed that despite opportunity, the management failed to produce the records that were in its possession and custody. In these circumstances, where the employer suppressed the relevant information which was in his custody and control, the Industrial Court cannot be faulted for drawing an adverse inference and in proceeding to compute the dues of the workmen on the basis of such material as was available on the record.

6. At the same time, the attention of the Court has been drawn on behalf of the management to the evidence of the sole witness who deposed on behalf of the workmen who were applicants before the Labour Court. He was unable to state precise details about the other 22 applicants or since when they were working with the management. The witness stated that he had not filed any document in respect of the 22 applicants.

Moreover, he admitted that no document had been given to the union for preparing Annexure G with regard to the wages and the length of service.

7. In view of the aforesaid grievance that was urged on behalf of the management, I had called upon Counsel appearing for the management to place before the Court a computation of the amount which, according to the management, is admittedly due and payable to the workmen under the Scheme for Voluntary Retirement which the workmen had accepted in the present case. Accordingly, a chart has been tendered and is taken on record and marked as “X-1”. The chart shows that the total dues which are payable to the workmen as computed by the management work out to Rs.13,42,855/-. Counsel appearing for the workmen has, however, drawn the attention of the Court to the fact that payments which are due and payable on account of bonus at the rate of 8.33 % which was admittedly payable under the notice for voluntary retirement have not been included in the chart submitted by the management. Counsel appearing for the workmen has submitted that a computation has been made by the Respondent workmen on the basis of the figures disclosed by the management

in its chart, and the total dues have accordingly been computed at Rs.17,87,555/- which is exclusive of interest. The interest component at the rate of 12% which has been awarded by the Labour Court with effect from 17th April, 2004 works out to Rs.4.82 lacs. Thus, according to the workmen on the basis of the figures submitted by the management the total dues as of date are Rs.22.70 lacs.

8. In my view, it is necessary and proper that a proper computation is arrived at by the Labour Court of the exact amount that is due and payable to the workmen. At the same time, it cannot be in the interests of justice that the workmen are left to fight an unending battle with the management which has declined to produce any records before the Labour Court and had shown no inclination to co-operate in the just disposal of the proceedings in the Labour Court. The figures which have been disclosed by the management before this Court show whatever according to the management, is admittedly due. According to the management an amount of Rs.13,42,855/- is due and payable exclusive of interest. It would therefore be in the interests of justice if a conditional order is passed by this Court requiring the management to deposit before

the Labour Court an amount of Rs.13,42,855/- as shown in the chart marked as “X-1”. Upon such deposit being made the proceedings shall stand remitted back to the Labour Court for carrying out a correct computation of the amounts that are due and payable. The management shall disclose before the Labour Court all the records that are in its possession, control and custody relating to the service of each of the individual workmen involved in the present case within a period of four weeks of the date of deposit. Upon deposit of the aforesaid amount which is admitted to be due and payable to the workmen, each of the workmen will be at liberty to withdraw the amount before the Labour Court subject to submitting proof of identification before the Registrar of the Labour Court. This will be subject to such final adjustment as may be arrived at after the final computation is made by the Labour Court. The Petitioners shall accordingly deposit the admitted amount of Rs.13,42,855/- before the Labour Court within a period of four weeks from today. In the event that there is any failure on the part of the Petitioners to effect the deposit as directed, this Petition shall stand dismissed without further reference to the Court and the order of the Labour Court shall stand. Conditional upon such deposit being made within the period stipulated, the Labour

Court shall proceed to recompute the amount payable to the workmen who form the subject matter of these proceedings, preferably within a period of four months of the date of deposit. The Petition is accordingly disposed of in these terms. There shall be no order as to costs.